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City of Bremerton
City Attorney's Office

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

WILLIAM & NATACHA SESKO,)	
)	
Appellants,)	No. 37574-5-II
)	
v.)	MOTION TO EXTEND
)	TIME TO APPEAL AND
CITY OF BREMERTON,)	OPPOSITION TO COURT'S
)	MOTION TO DISMISS
Respondent.)	
_____)	

Appellants William and Natacha Sesko oppose the Court's motion to dismiss and move for an extension of time within which to file their Notice of Appeal pursuant to RAP 18.8(b).

I. FACTS

This matter involves an attempt by the City of Bremerton to recoup the alleged costs of abating a nuisance on the Sesko property. The City's abatement contractor removed substantial quantities of the Seskos'

**MOTION TO EXTEND TIME TO APPEAL AND OPPOSITION TO COURT'S
MOTION TO DISMISS - 1**

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personal property – vehicles, heavy equipment, and building materials – and delivered them to scrap dealers. The abatement contract purported to transfer title to the personal property removed to the abatement contractor, who bid the job in two parts – the cost of abatement and a “salvage credit.” During the job, the City modified the contract. As to the Seskos’ Arsenal Way property, the City eliminated the bid “salvage credit” but required the contractor to account for “actual salvage” receipts. As to the Seskos’ Pennsylvania Avenue property, the City eliminated the salvage credit altogether. *See* App. Br. 4-20 (Case No. 33159-4-II); Declaration of Alan S. Middleton (Middleton Dec.) ¶¶ 2-3.

The Seskos argued in a prior appeal that the City had failed to properly credit them for salvage value, and specifically argued that the City was required to follow the execution statute (RCW 6.21) in disposing of the property – something the City admittedly failed to do. App. Br. *id.* 27-31. This Court remanded a prior judgment against the Seskos with instructions to the trial court to determine whether the City had properly credited salvage value. This Court did not decide the issue of whether the City had to comply with the execution statute. *See* Unpublished Opinion (Case No. 33159-4-II, Aug. 11, 2006) (Exhibit A to Middleton Dec.).

A trial was held in Kitsap County Superior Court. Judge Roof entered a written memorandum opinion on February 13, 2008. Middleton

Dec. Ex. B. In part, Judge Roof held that the execution statute did not apply. On appeal, the Seskos would argue in part that Judge Roof erred in failing to require the City to perform the abatement in conformance with the execution statute such that an accurate “salvage value” could be calculated. Middleton Dec. ¶ 6.

The trial court entered judgment against the Seskos on March 7, 2008. However, a copy of the judgment was not received by counsel for the Seskos until March 10, 2008. A Notice of Appeal was filed April 9, 2008, identifying the judgment entered on March 7, 2008. The Notice was therefore filed thirty-three days after entry of the judgment, but thirty days after receipt of the judgment by the Seskos’ counsel. Middleton Dec. ¶ 7.

II. ARGUMENT

A. RAP 18.8(b) Allows this Court To Extend the Time for Filing Appellants’ Notice of Appeal.

RAP 18.8(b) allows this Court to extend the time for filing of a notice of appeal in “extraordinary circumstances”:

The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal

RAP 18.8(b). As one commentator stated, “‘The law’ is simply that the appellate court has broad discretion to do whatever it regards as fair and equitable under the circumstances presented in each individual case.” 3

KARL B. TEGLAND, WASHINGTON PRACTICE, RULES PRACTICE RAP 18.8
(6th ed. 2007).

**B. Granting an Extension Would Prevent a Gross
Miscarriage of Justice.**

A copy of the trial court's memorandum opinion is attached to this motion. As noted in the Seskos' prior appeal, the City did not comply with the execution statute in performing this abatement. This Court did not decide the issue in the prior appeal. Both for purposes of this case and other nuisance abatements across the state, the issue of how a municipality must conduct an abatement in order to shift the cost of the abatement and properly credit salvage value to the property owner is of great importance. As the trial court has entered a substantial judgment against the Seskos based upon its conclusion that the execution statute does not apply, an extension is necessary to prevent a gross miscarriage of justice.

**C. Extraordinary Circumstances Exist To Justify the
Granting of an Extension.**

The Seskos' counsel in this matter is Alan S. Middleton of the law firm of Davis Wright Tremaine LLP. At the time of entry of the judgment below, Mr. Middleton was dealing with (b) (6)

(b) (6)

(b) (6) Middleton Dec. ¶¶ 8-10. In fact, on the date judgment was entered, Mr. Middleton (b) (6)

appearing for the entry of judgment. *Id.* ¶ 11. Mr. Middleton had authorized the City's attorney to sign the proposed judgment for him. *Id.*

Mr. Middleton received a copy of the judgment on Monday, March 10, 2008, and immediately calendared the deadline for filing a notice of appeal for thirty days later – or April 9, 2008. This admittedly is thirty-three days after entry of the judgment. The distraction of personal issues led to the mistake. *Id.* ¶¶ 8-11.


Mr. Middleton did not catch this mistake before the deadline had passed. He attended (b) (6)
(b) (6)
back to work until April 8, 2008, and discovered the calendaring error late that day. *Id.* ¶ 12.

III. CONCLUSION

For these reasons, the Court should deny the motion to dismiss and grant the Seskos' motion for an extension of time.

DATED this 30th day of April, 2008.

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